

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 232

October 28, 1959

EXEMPTION: TAXATION OF UNINCORPORATED ASSOCIATION ON FAILURE TO FILE AN INFORMATION RETURN

Syllabus:

When an exemption is denied to an unincorporated association for failure to file an annual information return the tax should be based on the income for the year in which the association failed to file, and not the income which would have been reported on the information return.

An unincorporated association doing business in California which is operated in a manner to qualify for an exemption under the Bank and Corporation Tax Law, did not file the information return required for the calendar year 1957. Section 23772(f), effective Sept. 11, 1957, provides "No organization shall receive any exemption prescribed by this part for any year in which it fails to file, on or before the due date the annual return required by said section."

A strict interpretation of subsection (f) would require a forfeiture of the taxpayer's exempt status for the year in which it failed to file a timely return. In the case of an unincorporated taxpayer a forfeiture would subject it to corporation income tax on its income during the current year.

Courts hold that a statute is open to construction only where the language used in the statute is ambiguous. Where the language of the statute conveys a definite meaning there is no occasion to resort to statutory construction. In the present case the legislature has provided a forfeiture of exemption for the year in which the taxpayer fails to file an information return.

Courts also hold that a statute, unambiguous on its face, may be subject to judicial construction, if strict application of the statutory language would lead to an absurd, unjust or unconstitutional result. People v. Villegas, 110 Cal. App. 2d 354, Wolfe v. Wallace, 154 Cal. App. 2d 523. It is presumed that the Legislature did not intend to create an absurdity or to violate the Constitution. It is not absurd to conclude that the Legislature intended to require each unincorporated association, as a condition precedent to exemption, to have filed an information return for its preceding year.

Note: Section 23772 has been so amended that failure to file a timely information return merely subjects the corporation or unincorporated association to the minimum tax. Assembly Bill 489, Chapter 56, Stats. 1959.